

FACULTY OF LAW

UNIVERSITY OF IBADAN

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COURSE: LAW OF CONTRACT (LCI 201)

GROUP 12 ASSIGNMENT:

THE DOCTRINE PRIVITY OF CONTRACT AND TRUST

CONCEPT.

LECTURER IN CHARGE: DR OLUSEGUN ONAKOYA

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Question

Taiwo, Kehinde and Idowu are beneficiaries under a trust deed created by their father, Mr. Jacobs who appointed his friend, Adam Smith as a trustee. A clause in the trust deed states that the beneficiaries shall be eligible and entitled to the benefits conferred upon them when Idowu, who is the youngest child attains the age of 21. However, after the youngest child turned 21 years, the trustee refuses the entreaties of the beneficiaries to confer the trust benefits on them. Aggrieved, Taiwo, Kehinde and Idowu have approached you as a counsel.

Advise them with the aid of relevant judicial authorities.

INTRODUCTION

This scenario primarily concerns the doctrine of privity of contract and its equitable exception through the concept of trust. **The doctrine of privity** holds that only parties to a contract can enforce or be bound by its terms. This principle was affirmed by **Lord Haldane** in Dunlop Pneumatic Tyre Co Ltd v. Selfridge & Co Ltd¹, where it was **held** that

“...Such a right may be conferred by way of property, as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right in personam to enforce the contract.”.

However, equity recognises certain **exceptions to the privity rule, one of the most significant being the creation of trusts**. A **trust** arises where legal rights or property are conferred on a trustee for the benefit of a third party (**the beneficiary**), even though that beneficiary is not a party to the original contract. In such instances, equity permits the beneficiary to enforce the terms of the trust against the trustee, thus enabling third-party enforcement without violating the privity doctrine.

In the present scenario, Mr. Jacobs, now deceased, executed a trust deed in favour of his three children (Taiwo, Kehinde, and Idowu) stipulating that the trust benefits would become accessible once the youngest, Idowu, attained the age of 21. Despite the condition having been fulfilled, the trustee, Mr. Adam Smith, has refused to confer the benefits. This refusal gives rise to the following legal issues.

¹ Dunlop Pneumatic Tyre Co Ltd v. Selfridge & Co Ltd [1915] AC 847

ISSUES

1. Whether or not a valid trusteeship existed between Mr Jacobs and Adam Smith
2. Whether or not the trustee (Adam Smith) is in breach of trust and his fiduciary obligations by refusing to distribute the trust property after the stipulated condition was fulfilled.
3. Whether or not the beneficiaries (Taiwo, Kehinde, and Idowu) have the right to bring an action against the trustee to confer the trust benefits on them, since the condition has been fulfilled.

ISSUE 1: WHETHER OR NOT A VALID TRUSTEESHIP EXISTED BETWEEN MR. JACOBS AND ADAM SMITH

RULE:

A trust is a fiduciary relationship in which property is transferred by a settlor to a trustee to be held for the benefit of a third party (**the beneficiary**). The legal requirements for creating a valid trust are famously known as the three certainties: **certainty of intention, certainty of subject matter, and certainty of objects (beneficiaries)**, as laid down in **Knight v. Knight (1840)**². It is not necessary that the word “**trust**” be used explicitly, as the courts will look to the substance of the arrangement. In **Paul v. Constance [1977]**³,

² **Knight v. Knight (1840)** 3 Beav. 148.

³ **Paul v. Constance [1977]** 1 WLR 527

the Court held that the settlor's clear conduct and words could be sufficient to infer an intention to create a trust. Similarly, in **Ogunmefun v. Ogunmefun** (1931)⁴, the Nigerian court affirmed that once a trust is created with certainty and the trustee accepts responsibility, he becomes legally bound to administer the trust in accordance with its terms.

In addition, trust arrangements stand as equitable exceptions to the doctrine of privity of contract. Although a third party generally cannot enforce a contract, beneficiaries under a trust acquire equitable rights and can sue in equity. This exception has been recognized in numerous cases including **Gregory and Parker v. Williams** (1816) and **Lloyds v. Harper** (1880)⁵

APPLICATION:

To determine whether a valid trusteeship exists between Mr Jacobs and Adam Smith, the three certainties as laid down in **Knight v Knight** (1840) (certainty of intention, certainty of subject matter, and certainty of objects) must be examined.

The requirement of **certainty of intention** is addressed by the fact that Mr Jacobs executed a formal trust deed, appointing Adam Smith as trustee for the benefit of his children, Taiwo, Kehinde, and Idowu. This deed sets out the purpose of the arrangement and the condition that Idowu must attain the age of 21 before benefits are conferred. Such express documentation mirrors the reasoning in **Paul v Constance** [1977], where the court considered conduct and words sufficient to constitute intention. **The use of a formal deed in this case strengthens the indication of intent.** This aligns with the decision in **Ogunmefun v Ogunmefun** (1931), where the Nigerian court held that once a

⁴ **Ogunmefun v. Ogunmefun** (1931) 10 NLR 82

⁵ **Lloyds v. Harper** (1880) 16 Ch D 290.

trust is created with certainty and the trustee accepts responsibility, he becomes legally bound.

The requirement of certainty of subject matter is met as the property or benefit to be held in trust is clearly identified within the deed. The trust property is not vague or indeterminate, satisfying the requirement that trust property must be clearly defined.

With regard to certainty of objects, the trust deed names Taiwo, Kehinde, and Idowu as the beneficiaries. Their identities are specific and unambiguous, fulfilling the requirement that the beneficiaries be clearly ascertainable.

The legal relationship arising from this trust arrangement also engages the equitable exception to the doctrine of privity of contract. Although third parties generally lack standing to enforce a contract, beneficiaries under a trust acquire enforceable equitable rights. This principle was established in **Gregory and Parker v Williams** (1816) and reaffirmed in **Lloyds v Harper** (1880), both of which recognised the right of beneficiaries to sue where a fiduciary duty is owed.

The facts reveal that Adam Smith **accepted** the trusteeship, thereby creating a fiduciary obligation to administer the trust according to its terms. As confirmed in **Ogunmefun v Ogunmefun**, this acceptance triggers enforceable obligations in equity. The condition precedent (that Idowu must attain the age of 21) has already been met, and the refusal of the trustee to distribute the benefits engages the legal and equitable principles governing fiduciary conduct under trust law

CONCLUSION:

It is therefore concluded that a valid trusteeship exists between Mr. Jacobs and Adam Smith. The trust deed executed by Mr. Jacobs satisfies all three certainties necessary for the creation of a valid trust. The naming of specific beneficiaries, the clear stipulation of

conditions, and the acceptance of responsibility by Adam Smith elevate the arrangement beyond mere contract to a binding fiduciary relationship.

ISSUE 2: WHETHER OR NOT THE TRUSTEE (ADAM SMITH) IS IN BREACH OF TRUST AND HIS FIDUCIARY OBLIGATIONS BY REFUSING TO DISTRIBUTE THE TRUST PROPERTY AFTER THE STIPULATED CONDITION WAS FULFILLED

RULE:

A breach of trust occurs where a trustee fails to carry out the trust in accordance with its terms or acts contrary to their fiduciary duties. These fiduciary duties include **loyalty, good faith, and acting solely in the interest of the beneficiaries**. In **Tito v. Waddell**⁶, it was held that trustees are bound to adhere strictly to the terms of the trust.

Furthermore, in **Tempest v. Lord Camoys (1882)**⁷, it was held that trustees cannot arbitrarily withhold trust property from beneficiaries once the conditions for enjoyment have been fulfilled. In **Armitage v. Nurse [1998]**⁸, Millet LJ stated that the core obligation of a trustee is to act **honestly and in good faith in accordance with the terms of the trust**.

APPLICATION:

In the present case, Adam Smith's refusal to confer the benefits upon Taiwo, Kehinde, and Idowu after Idowu had turned 21 directly violates the condition laid out in the trust

⁶ Tito v. Waddell (No 2) [1977] Ch 106,

⁷ Tempest v. Lord Camoys (1882) 21 Ch D 571

⁸ Armitage v. Nurse [1998] Ch 241

deed. The duty to distribute the trust property matured upon fulfillment of the stated condition. By withholding the trust assets despite this, he is acting contrary to his fiduciary duty to act in good faith and follow the terms of the trust.

There is no discretionary power or future interest retained in the trust instrument that would justify the delay. His action is in accordance with what is regarded as breach of trust as defined in **Tito v. Waddell and Tempest v. Lord Camoys**. As further affirmed in **Re Smith [1928]** trustees must act once legal conditions are fulfilled.

CONCLUSION:

Adam Smith is in breach of trust and fiduciary obligations for failing to distribute the trust property after the stipulated condition (**Idowu turning 21**) was fulfilled.

ISSUE 3: WHETHER OR NOT THE BENEFICIARIES (TAIWO, KEHINDE, AND IDOWU) HAVE THE RIGHT TO BRING AN ACTION AGAINST THE TRUSTEE TO CONFER THE TRUST BENEFITS ON THEM, SINCE THE CONDITION HAS BEEN FULFILLED

RULE:

Under the rule in **Saunders v. Vautier** (1841)⁹, where all the beneficiaries of a trust are of full age (**sui juris**) and are absolutely entitled to the trust property, they may

⁹ Saunders v. Vautier (1841) 4 Beav 115

collectively terminate the trust and compel the trustee to transfer the trust property to them, even if the trust deed prescribes a later time.

This principle was affirmed in *Re Smith* [1928]¹⁰, where the court compelled trustees to transfer trust property once the beneficiaries met the stipulated criteria.

Furthermore, where a trustee mismanages a trust or refuses to fulfill his duties, the beneficiaries are entitled to approach the court for an order compelling performance, removal of the trustee, or even compensation.

APPLICATION:

In this case, Taiwo, Kehinde, and Idowu are now all of full age, with Idowu being the last to attain 21 years. They have a vested and absolute interest in the trust property, and have jointly agreed to claim the benefits conferred upon them by the trust. There are no contingent or competing interests in the trust property.

By the equitable principle in **Saunders v. Vautier**, they have the right to demand termination of the trust and transfer of the property.

CONCLUSION:

Adam Smith's continued refusal not only constitutes a breach of fiduciary duty but opens him to equitable action by the beneficiaries.

Taiwo, Kehinde, and Idowu have the legal right to bring an action against Adam Smith to compel performance of the trust and confer the benefits due to them.

¹⁰ *Re Smith* [1928] Ch 915

Conclusively, while the doctrine of privity of contract excludes third parties from enforcing contractual obligations, equity provides an exception where a valid trust is created for their benefit. In this case, it is evident from the facts and legal analysis that Mr. Jacobs lawfully created a trust in favour of his children. Adam Smith, having accepted the role of trustee, is bound to act in accordance with the trust deed. His refusal to distribute the trust benefits now that the stipulated age requirement has been met constitutes a breach of trust.

Accordingly, we humbly advise the beneficiaries (Taiwo, Kehinde, and Idowu) to institute legal proceedings against Adam Smith to enforce the trust and compel the distribution of the trust property. The law of equity stands firmly on their side, and the court is likely to uphold their right to the trust benefits.